

Colorado's New Public School Contract Terms and Conditions Law

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In the 2022 Regular Session, the Colorado Legislature passed House Bill 22-1252: Public School Contract Terms and Conditions. The bill helps school districts by automatically imposing certain best practice provisions and nullifying other generally unfavorable provisions often included in contracts. Procurement departments should be aware of the bill's major requirements to ensure productive and transparent contract negotiations.

The bill, which applies to all contracts executed after July 1, 2022, establishes that all contracts, except for contracts with another government entity, are governed by Colorado law, even if the language of the contract specifies otherwise.

Each contract must include language stating that "any and all contractual financial obligations of the school district that are payable after the current fiscal year are contingent on money to pay the obligations being appropriated, budgeted, and otherwise made available," in accordance with the Taxpayer's Bill of Rights Amendment (TABOR).

The contract must also include language requiring the contractor to comply with all applicable federal, state, and local laws, rules, and regulations in effect when the contract is executed or thereafter established. This includes without limitation, laws, rules, and regulations applicable to discrimination, unfair employment practices, and the protection of personal identifying information, including student personal identifying information.

Additionally, the bill requires language stating that contractor shall perform its duties as an independent contractor, must pay when due all applicable employment taxes and income taxes for its employees incurred in the performance of the contract, and shall provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law.

In addition to requiring the preceding terms and conditions, the bill voids any contract provision that:

- Requires the school district to indemnify or hold harmless another person
- Agrees to binding arbitration or any other binding extra-judicial dispute resolution process
- Agrees to limit liability of another person for bodily injury, death, or damage to property of the school district that is caused by the negligence or willful misconduct of the person or of the person's employees or agents
- Purports to waive, alter, or limit the application of any provision of the Colorado Governmental Immunity Act
- Purports to waive, alter, or limit the application of the Student Data Transparency and Security Act, the provisions of Colorado Revised Statutes sections 6-1-713 and 6-1-713.5 relating to protection and disposal of personal identifying information, the provisions of article 73 of title 24 of Colorado Revised Statutes relating to security breaches and personal information, or the Colorado Privacy Act
- Conflicts with one of the required provisions listed earlier

Finally, the bill applies to any type of agreement, regardless of what it may be called, where the principal purpose is to acquire supplies, services, or construction for the direct benefit of or in support of a public

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school. Contracts for professional services (architecture, engineering, land surveying, landscape architecture, and industrial hygiene) are exempted.